



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

OBJECTION TO AN
APPURTENANT RIGHTS CLAIM

Form APRT-OBJ

For Official Use Only:

2012 SEP 21 PM 1:22

Instructions: Complete one (1) "Objection to an Appurtenant Rights Claim Form" (Form APRT-OBJ) for each Appurtenant rights claim to which you object.

- Any person or entity with a legal or material interest in the water may file written objections. Persons filing objections must serve copies of the written objection and all related documentation / evidence 1) on the applicant; and 2) on the Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.
- Appurtenant rights claimants will have an opportunity to submit a rebuttal to the written objections.
- For questions, contact the Commission's Stream Protection and Management Branch at (808) 587-0234.

A. OBJECTOR

NAME/COMPANY

Wailuku Water Company, LLC

Contact Person

Avery B. Chumbley

Mailing Address

P. O. Box 2790, Wailuku, Hawaii 96793

Phone

808/244-7079

Fax

808/242-7968

E-mail Address

abc@aloha.net

Explain your legal or material interest in objecting to this Appurtenant rights claim.

Wailuku Water Company, LLC is the owner and operator of the private distribution system through which the Applicant receives surface water. Determination of Applicant's claim of an appurtenant right to water that is distributed through Wailuku Water Company, LLC's distribution system may impact the operation of the distribution system and will affect the property rights of Wailuku Water Company, LLC.

B. APPLICANT (As listed in the Public Notice)

NAME/COMPANY

Lawrence Miyahira

or Use Permit Application No.

P.O. Box 762

Mailing Address

Wailuku, HI 96793

SWUPA# 2258

Identify all Tax Map Keys (TMK)

TMK: (2)3-3-002-009; (2)3-3-002-010; (2)3-3-002-021

C. REASON(S) FOR OBJECTION

Select all that apply below. The objector has the burden of proof on all objections.

☐ The parcel was not used as a residence or for cultivation at the time of the Mahele.

☒ The Appurtenant right to water has been reserved or extinguished.

☒ There are materially false statements or representations in the claimant's application for Appurtenant rights.

Summarize carefully your objection and how approval of this Application would adversely affect your legal interests (Use separate page if needed):

The claim must be reviewed in light of the following:

1-Whether the claim properly characterized the source of the water for which the claim is asserted;

2-Whether the rights claimed are subject to Public Utilities Commission Regulation; and

3-Whether the rights have been extinguished.

See the attached sheets which expand on the objections and provide documentary support for the objection(s).

Supporting documentation / evidence must be provided on separate sheets.

D. OBJECTOR SIGNATURE

☐ By checking this box (for electronic submissions) or signing below (for hardcopy submissions) indicates that the signatory understands and swears that the information provided is accurate and true to the best of their knowledge.

Print Name:

Avery B. Chumbley,
Authorized Representative

Signature:

Date:

September 18, 2012

OTHER 3650 6
SWUPA 2258.6
10123

Whether the Claim Properly Characterized The Source of Water

The claim contains an ambiguity or possibly a mischaracterization on the water source for the appurtenant right.

A claimant to an appurtenant right must establish that the surface water was taken directly from the stream, or from an auwai that was connected to a stream, at the time of the original conversion of the property to fee simple title.

Claims based on surface water taken from a privately owned distribution system and not from a stream, especially a distribution system that did not exist at the time of the original fee simple conversion, does not establish an appurtenant right to surface water delivered through a privately owned distribution system.

Accordingly, factual and legal questions exist on whether the subject claim for appurtenant rights derives from a diversion that existed at the time of the original fee simple conversion from a stream or an auwai that was then connected to a stream.

In addition, factual and legal questions exist as to whether applicant is required to hold a stream diversion works permit and/or a stream channel alteration permit and whether there is a right to use a privately owned distribution system if the surface water is being diverted through that privately owned distribution system.

Rights Claimed May be Subject to Public Utilities Commission Regulation

The claim asserts a right to use surface water that reaches the claimant's property through a distribution system owned by Wailuku Water Company, LLC

The ability of Wailuku Water Company, LLC to deliver water through that distribution system is the subject of a proceeding pending before the State of Hawaii Public Utilities Commission ("PUC").

Any determination by the Commission on Water Resource Management on claims in which the surface water is delivered through use of the distribution system owned by Wailuku Water Company, LLC must include a condition that the delivery of the surface water is subject to applicable terms, conditions, rules, regulations, decisions, orders, tariffs, and actions of the PUC (collectively "PUC Regulation")

Accordingly, factual and legal questions exist on whether the subject claim for appurtenant rights may be subject to PUC Regulation.

Were Appurtenant Water Rights Extinguished

Appurtenant rights to surface water are created at the time the original conversion to fee simple land. While an appurtenant right to surface water cannot be transferred separately and apart from land to which it attaches, the right can be extinguished.

The appurtenant right to surface water is extinguished if the Grantor of the property transfers the property and either reserves the right to the Grantor or transfers the property without transferring the appurtenant right.

The conveyance document in the chain of title to the subject property contain language to the following effect:

EXCEPTING, RESERVING AND GRANTING, however, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property, including the right to develop and utilize the same; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon.

Accordingly, factual and legal questions exist as to whether an appurtenant right has been extinguished.

R-148

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

SEP 24, 1999 08:01 AM

Doc No(s) 99-153923

/s/CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

CONVEYANCE TAX: \$10.00

AFTER RECORDATION, RETURN BY MAIL (X) PICK-UP ()

LAWRENCE M. MIYAHIRA
JANET C. MIYAHIRA
P. O. BOX 762
WAILUKU, HI 96793

TG: 389583
TGE: 993021135
Pamela M. Pacheco
T6-A279053B
Total Pages: 7

TITLE OF DOCUMENT:

QUITCLAIM DEED WITH EXCEPTIONS AND RESERVATIONS

PARTIES TO DOCUMENT:

Grantor: WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation

Grantee: LAWRENCE M. MIYAHIRA and JANET C. MIYAHIRA, husband and wife
P. O. Box 762, Wailuku, Hawaii 96793

PROPERTY DESCRIPTION: : LIBER/PAGE/DOCUMENT NO.:
: :
SEE EXHIBIT "A" : LAND COURT DOCUMENT NO.:
: :
: TRANSFER CERTIFICATE OF
: TITLE NO(S) .:

Tax Map Key Nos.: (2) 3-3-02-10 and (2) 3-3-02-21

RUSH MOORE CRAVEN SUTTON MORRY & BEH
Attorneys at Law

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QUITCLAIM DEED WITH EXCEPTIONS AND RESERVATIONS

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, hereinafter called the "Grantor", for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to Grantor paid by LAWRENCE M. MIYAHIRA and JANET C. MIYAHIRA, husband and wife, whose address is P. O. Box 762, Wailuku, Hawaii 96793, hereinafter called the "Grantee", receipt whereof is hereby acknowledged, does hereby RELEASE, REMISE and FOREVER QUITCLAIM, absolutely and in fee simple, all of Grantor's estate, right, title and interest in and to the real property described in Exhibit "A" hereto attached and expressly made a part hereof, unto Grantee as joint tenants with full rights of survivorship and not as tenants in common;

EXCEPTING AND RESERVING however, unto the Grantor, its successors and assigns, all water and water rights within or appurtenant to the granted premises, provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon.

RESERVING AND EXCEPTING unto Grantor, its successors and assigns, forever, as appurtenant to the lands which are located adjacent to or in the vicinity of the granted premises and which are now owned or used or hereafter acquired and used by Grantor, its successors and assigns in agricultural operations, the unrestricted right to engage in any type of farming operation including but not limited to open burning, percolating, evaporating, fertilizing, milling, generating power, water diversion, plowing, grading, storing, hauling, spraying pesticides, irrigating, crop dusting and all other activities incidental to the planting, farming, harvesting and processing of agricultural products and by-products, which operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration and other nuisances to be discharged or emitted over and upon the granted premises. Grantor, its successors and assigns shall not be responsible or liable to the Grantee, its successors and assigns, for the consequences from the creation and discharge of such noxious emissions within the Federal & State environmental and agricultural laws and regulations and Grantee, its successors and assigns, shall indemnify and hold Grantor harmless from any liability or expense resulting from such

claims arising from such nuisance whether made by the Grantee, its successors and assigns, or guests or other persons using the granted premises.

Grantee is aware, understands and agrees that the real property described in Exhibit "A" is sold and hereby accepted by Grantee in its "AS IS" condition. Grantor makes no warranties, express or implied, with respect to said property or improvements (if any), including, but not limited to, the size of the property, any implied warranty of merchantability, habitability, workmanlike construction or fitness of said property for a particular purpose, compliance with or any other representation in regard to any building, health, zoning, land use or other applicable county, state or federal statute, ordinance, code, rule, regulation or other law, or the availability or condition of any electrical, water, gas, plumbing or sewage systems.

Grantee also aware of and accepts that said property described in Exhibit "A" is being conveyed without representation or warranty regarding the availability of water, electric, telephone or waste disposal services and Grantee understands that it is Grantee's responsibility to establish a water system to service said property and that any and all costs for water, electric, telephone or waste disposal services shall be the sole responsibility of Grantee and that a water catchment system will be required for domestic water service. Grantee is advised to contact the State of Hawaii, Department of Health, Wastewater Section regarding waste disposal (cesspool or septic) requirements.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.


This document may be executed in counterparts. Each counterpart shall be executed by one or more of the parties to this document and the several counterparts shall constitute one document to the same effect as though the signatures of all of the parties were upon the same document.

IN WITNESS WHEREOF, the Grantor and the Grantee have
executed these presents this 16th day of September, 1999.


GRANTOR:

WAILUKU AGRIBUSINESS CO., INC.

By

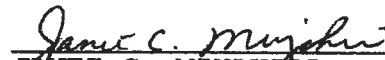

Its Vice President,
J. S. Andrasick

By


Its Vice President,
W. K. Tallett

GRANTEE:


LAWRENCE M. MIYAHIRA


JANET C. MIYAHIRA

STATE OF HAWAII

)

) SS.

COUNTY OF MAUI

)

On this 21st day of September 1999,
before me personally appeared LAWRENCE M. MIYAHIRA, to me
personally known, who, being by me duly sworn or affirmed, did say
that such person(s) executed the foregoing instrument as the free
act and deed of such person(s), and if applicable in the capacity
shown, having been duly authorized to execute such instrument in
such capacity.



Type or print name: Edgar N. Nakama
Notary Public, in and for said
County and State.

My commission expires: JUN 17 2000

STATE OF HAWAII

)

) SS.

COUNTY OF MAUI

)

On this 21st day of September 1999,
before me personally appeared JANET C. MIYAHIRA, to me personally
known, who, being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and
deed of such person(s), and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.



Type or print name: Edgar N. Nakama
Notary Public, in and for said
County and State.

My commission expires: JUN 17 2000

EXHIBIT "A"

ALL of those certain parcels of land situate at Waiehu, District of Wailuku, County of Maui, State of Hawaii, being poalimas situated within Land Commission Award 2572, Apana 1, and more particularly described as follows:

FIRST: That certain parcel of land containing an approximate area of 3,263 square feet, more or less, bearing State of Hawaii tax map key parcel number 2nd Division, 3-3-002-010, as shown on the tax maps of the State of Hawaii; and

SECOND: That certain parcel of land containing an approximate area of 2,614 square feet, more or less, bearing State of Hawaii tax map key parcel number 2nd Division, 3-3-002-021, as shown on the tax maps of the State of Hawaii.

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